

Gerber Plastic Company and International Molders & Foundry Workers Union of North America, AFL, Petitioner. Case No. 14-RC-2767. August 3, 1955

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Thomas W. Kennedy, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.
4. The Employer is engaged in the manufacture of plastic novelties, toys, housewares, and utility items and in contract molding at its three plants in St. Louis, Missouri.¹

The parties generally agree that all production, maintenance, and warehouse employees at the Employer's three plants, excluding office clerical and professional employees, the truckdriver, the laboratory engineer, the inventory clerk, guards, watchmen, the toolroom supervisor, the quality control chief, foremen, foreladies, and all other supervisors as defined in the Act, constitute an appropriate unit. The parties disagree with respect to the inclusion in the unit of the following employees: materials handlers, toolroom personnel, the injection mold maintenance helper at the Eighth Street plant, shipping clerks, quality control personnel, maintenance personnel at the Pine Street plant, and leadmen. There is no history of bargaining for the employees herein sought.²

Material handlers and the truckdriver: The Employer would exclude material handlers on the ground that their work is essentially similar to that of the truckdriver, who the parties agree should be excluded from the unit.

The 4 material handlers spend 50 percent of their time transporting raw material from the Spruce Street plant to the Eighth Street plant and the remainder of their time in blending or in odd jobs; whenever

¹ The Employer's plants and warehouse facilities are located at 308 South Eighth Street, herein called the Eighth Street plant; at Eighth and Spruce Streets, herein called the Spruce Street plant; and at 2622 Pine Street, herein called the Pine Street plant.

² In Gerber Plastic Company, 108 NLRB 403, the Board found appropriate, and directed an election in, a unit of production, maintenance, and warehouse employees in the same three plants; a majority of the employees, however, voted against representation by United Gas, Coke, & Chemical Workers of America, CIO, the petitioner in that case.

possible they use the truck. The truckdriver, according to the testimony in the record, "is basically a material handler" who spends not more than 25 percent of his time driving the truck. Under these circumstances, we find that the material handlers, including the truckdriver (who is basically a material handler), have interests in common with the other production and maintenance employees, and shall include them in the unit.³

Toolroom personnel: The parties agree as to the exclusion of the toolroom supervisor but disagree as to the two hourly paid toolroom employees. The Employer would exclude them on the grounds that their work is confidential and that they are technical employees. These employees are employed in the Eighth Street plant. Although they are familiar with certain phases of designs and operations which are unique in the Employer's plants and over which it maintains secrecy in order to protect its competitive position in the industry, it nowhere appears that they assist or act in a confidential capacity to any person who exercises managerial functions in the field of labor relations. Nor is there any evidence that they possess the skills or educational background customarily required of technical employees. We therefore find that the toolroom employees are neither confidential⁴ nor technical⁵ employees, and we shall accordingly include them in the unit.

The injection maintenance molding man and the injection maintenance molding helper: At the Eighth Street plant there are two maintenance employees, known respectively as the injection maintenance molding man and the injection maintenance molding helper. The parties agree that the injection maintenance molding man is a supervisor, and we shall exclude him from the unit. The parties disagree with respect to the injection maintenance molding helper. The Employer would exclude him on the basis of his alleged specialized knowledge and skill and his alleged lack of a community of interest with the other employees in the unit. We find nothing in the record indicating that his skills, interests, or conditions of employment are sufficiently different from those of the other employees to warrant his exclusion from the unit. Accordingly, we shall include him.

Shipping clerks: At the hearing, the Employer contended that all of the shipping clerks should be excluded from the unit as office employees; in its brief, the Employer appears to have modified its position, contending that only one of the shipping employees should be excluded as an office employee.

The three shipping clerks, situated in the Spruce Street plant, perform the usual functions of plant clerical employees, including the accumulation of merchandise to correspond to customers' orders, the

³ See *Chicago Pneumatic Tool Company*, 108 NLRB 174.

⁴ *E. I. DuPont de Nemours and Company, Inc., Construction Division, Savannah River Plant*, 107 NLRB 734, at page 744, and cases therein cited.

⁵ *Goodyear Engineering Corporation*, 100 NLRB 971.

labeling thereof and the assignment of correct bills of lading thereto, contacting the shipper, and the routing of shipments onto the shippers' trucks. All shipping employees are directly responsible to the traffic manager, who is their immediate supervisor.⁶ All shipping clerks work simultaneously on the same orders. There is no evidence that they perform office work or work in office areas. We shall therefore include all of the shipping clerks in the unit as factory clerical employees.⁷

Quality control personnel: The Employer contends that the quality control personnel should be excluded from the unit on the basis of the alleged dissimilarity of their work, as compared with that of the other employees in the unit.

The quality control personnel include a quality control supervisor in charge of all quality control personnel, and who the parties agree, and we find, should be excluded from the unit as a supervisor as defined in the Act.⁸ The other quality control personnel consist of 9 or 10 quality control inspectors, 1 for each of the Employer's production lines. The quality control personnel inspect items on the production lines and notify the floorladies or their supervisors of defective production. Quality control personnel are empowered to shut down lines to correct production defects. They are required to use considerable care to maintain the high standards of cleanliness required of the Employer's product. During peak production, the inspectors are recruited directly from the production lines. Contrary to the Employer's contention, we find that the interests of the quality control personnel are not sufficiently dissimilar from those of the other employees to justify their exclusion, and we shall therefore, in accordance with our customary practice, include them in the unit.⁹

Maintenance employees at the Pine Street plant: The Employer would exclude the Pine Street plant maintenance personnel on the ground that they are technical employees within the meaning of the Act.

The 2 maintenance employees at the Pine Street plant spend up to 50 percent of their time in general maintenance work, including the performance of mechanical, electrical, and minor building repairs. They spend the rest of their time assisting in the building of experimental equipment. There is no evidence relative to their technical

⁶ In its brief, the Employer contends that one of the shipping clerks is partially an office employee and as such should be excluded. The record does not support this contention. Although the Employer does not contend that this shipping clerk is a supervisor, it stated in its brief that he has authority to recommend firing or discipline. However, the record does not appear to support a finding that his recommendations are effective. Moreover, it is clear that all three shipping clerks are directly responsible to the traffic manager, their immediate supervisor.

⁷ *Mrs. Tucker's Products, Division of Anderson, Clayton & Company*, 106 NLRB 533.

⁸ The quality control supervisor can discipline employees and recommend discharges and layoffs.

⁹ *Metal Products Corporation*, 107 NLRB 94.

or educational background or as to degree of skill, if any required of them by their work on experimental equipment. Whatever special aptitude they may possess for this work appears to have been acquired primarily as a result of the experience they acquired at their job. Under these circumstances, we find that the maintenance employees at the Pine Street plant are not technical employees within the meaning of the Act, and we shall therefore include them in the unit.¹⁰

Leadmen: The Employer would exclude leadmen from the unit on the ground that they are supervisors as defined in the Act.

At full production, the Employer employs a total of 9 leadmen, who, with 3 foremen, are in charge of a total of approximately 75 employees on the third floor of the Pine Street plant. Leadmen are paid 25 cents an hour more than the other employees. They have the authority to replace, or to recommend to their foremen the replacement of, employees who do not properly perform their jobs. They can effectively recommend the discipline and discharge of employees and are called upon to make independent judgments in making those recommendations. We find that the leadmen are supervisors as defined in the Act, and we shall therefore exclude them from the unit.¹¹

Accordingly, we find that all production, maintenance, and warehouse employees at the Employer's three plants at 2622 Pine Street, Eighth and Spruce Streets, and 308 South Eighth Street, in St. Louis, Missouri, including materials handlers, the truckdriver, toolroom employees, the injection maintenance molding helper, maintenance employees at the Eighth and Pine Street plant, shipping clerks, and quality control personnel, but excluding the inventory clerk and other office clerical employees, professional employees, the laboratory engineer, guards, watchmen, toolroom supervisor, the injection maintenance molding man, the quality control personnel supervisor, foremen, foreladies, leadmen, and other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

¹⁰ *Goodyear Engineering Corporation*, footnote 5, *supra*.

¹¹ There was uncontradicted testimony in the record that the authority of the leadmen has been considerably increased since the date of the Board's earlier decision (footnote 2, *supra*) in which the Board found that the leadmen were not supervisors. The present record clearly shows that the leadmen now have the power to "effectively recommend discharge or discipline of employees."

**Miners Coal Company and John R. Smith, Homer Cartwright, Jr.,
Reuben S. Smith, Wilma Smith.** *Case No. 9-CA-867. August 5,
1955*

DECISION AND ORDER

On April 7, 1955, Trial Examiner Lee J. Best issued his Intermediate Report in the above-entitled proceeding, finding that the